

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

UNITED STATES OF AMERICA

v.

JAMES PAUL MILLER

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CASE NO. 4:06CR197

**REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the request for revocation of Defendant's supervised release. After the District Court referred the matter to this Court for a report and recommendation, the Court conducted a hearing on October 27, 2008 to determine whether the Defendant violated his supervised release. At that hearing, the Court found that the conditions of Defendant's supervision should be modified as set forth below.

On June 19, 2007, the Defendant was sentenced by the Honorable Michael H. Schneider, United States District Judge, to three (3) years probation for the offense of Possession of a Firearm While Addicted to or an Unlawful User of a Controlled Substance.

On October 3, 2008, the U.S. Probation Officer filed a Petition for Warrant or Summons for Offender Under Supervision (Dkt.32). The petition asserted that Defendant violated the following conditions of his probation: (1) Defendant shall not commit another federal, state, or local crime; (2) Defendant shall refrain from any unlawful use of a controlled substance, and Defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as directed by the court; and (3) Defendant shall refrain from excessive use of alcohol and

shall not purchase, possess, use, distribute, or administer any narcotic or other controlled substance, or any paraphernalia related to such substances, except as prescribed by a physician.

The petition alleged that Defendant committed the following violations: (1) on September 10, 2008, Defendant committed the misdemeanor offense of Possession/Use of a Substance or Device to Falsify a Drug Test; this conduct stemmed from Defendant's attempt to use a urination device (small Elmer's glue bottle filled with urine) during an attempted collection of a urine specimen at Defendant's residence in Blossom, Texas; and the urination device was observed and confiscated by U.S. Probation Officer Ben Sanders; and (2) on September 10, 2008, Defendant admitted verbally and in writing to using methamphetamine for the past month including the day of the attempted urine collection.

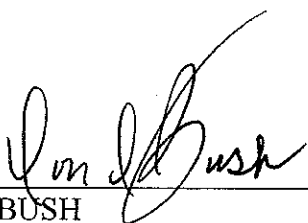
Prior to the Government putting on its case, Defendant entered a plea of true to the alleged violations. Defendant also waived allocution before a district judge. At the hearing, the Court recommended that Defendant's supervised release be modified as set forth below.

RECOMMENDATION

The Court recommends that Defendant's supervised release be modified as follows: Defendant shall be placed on home detention for a period not to exceed 180 days, to commence immediately on the date of the revocation hearing. During this time, Defendant shall remain at his place of residence except for employment and other activities approved in advance by the U.S. Probation Officer. Defendant shall maintain a telephone at his place of residence without "call forwarding", "a modem", "Caller I.D.", "call waiting", or portable cordless telephones for the above period. At the direction of the probation officer, Defendant shall wear an electronic monitoring

device and follow electronic monitoring procedures specified by the probation officer. Defendant is to pay the cost associated with his program of electronic monitoring.

SIGNED this 29 day of October, 2008.



DON D. BUSH
UNITED STATES MAGISTRATE JUDGE